

SEP 3 2015

AT BALTIMORE
CLERK, U.S. DISTRICT COURT
DISTRICT OF MARYLAND

BY

DEPUTY

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

WILLIAM M. SCHMALFELDT)	Case No. 1:15-cv-01241-RDB
)	
Plaintiff,)	
vs.)	MOTION TO STRIKE ORDER
PATRICK G. GRADY, et al,)	AND ISSUE NEW ORDER
)	
Defendants)	
)	

MOTION TO STRIKE ORDER AND ISSUE NEW ORDER

COMES NOW Scott Hinckley, *pro per*, a defendant in this case, and hereby moves that the court strike the order to dismiss the complaint because it is incorrect and issue a new order that is correct.

DISCUSSION

The court's order (ECF 45) granting the Plaintiff's Motion to Dismiss (ECF 35) contains a section detailing "findings of fact and conclusions of law" which includes a demonstrably false statement. The statement "None of the defendants in the plaintiff's first or amended complaint have filed an official answer to the complaint." is incorrect and false. This Defendant filed an answer to the amended complaint two days before the order granting the Motion to Dismiss was filed. The court should strike this order and issue a new one without false information in it.

FALSE STATEMENT IN ORDER

The text of the order granted by the court was provided by the Plaintiff in his Motion to Dismiss. On the date he wrote that sample order, August 13th, 2015, the statement in question

was accurate. However, the sequence of events that followed the defendant creating his motion invalidated and made false this statement. The Plaintiff's motion was received and docketed by the court on August 17th. This is the same day that this Defendant's Motion to Waive Service, Answer to Complaint, and Counterclaim (hereinafter Answer to Complaint) was completed and mailed to the court. On the next day, August 18th, the court received and docketed this Answer to Complaint. (ECF 43) This event specifically makes the statement in the proposed order incorrect and false. A formal answer to the Plaintiff's Amended Complaint was now on record with this Court. The court did not grant the Plaintiff's Motion to Dismiss until the next day, August 19th, and it was not docketed until August 20th. (ECF 45) A full day had passed before the court granted the order, and two days had passed before it was entered. The order of events allowed a false statement to be submitted to the Court for approval. There is not a challenge to the order of events – the record of events simply invalidates the finding of facts and conclusions that the Plaintiff wished to draw and enter in the record.

While it is unclear why the court has chosen to not address the existence of Defendant's answer and counterclaim in allowing this case to be closed, to allow a false statement that an answer was not filed to be included in this Court's order is an obvious misstatement of fact. Since the order includes the statement: "THE COURT, having considered the motion by Plaintiff William M. Schmalfeldt, Sr., now makes and enters the following findings of fact and conclusions of law", allowing a false statement to appear in the order would give it a sense of legitimacy and a perception of truthfulness that it does not deserve. In addition, the inclusion of this statement in the order serves no useful purpose in an order granting a Motion to Dismiss. It would be a strong statement of fact in a motion for summary judgement, but as a statement of a finding of fact in an order to dismiss, it is meant to be a parting shot at the defendants and not a conclusions of law. This is especially true as it is provably false. The only way this can be

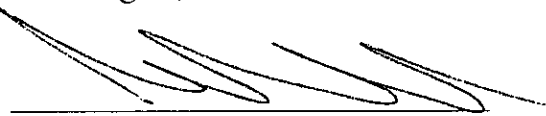
corrected is for the court to strike the current order and issue a new one without such a false statement in it. A corrected order has been provided as a convenience for the Court.

PRAYER FOR RELIEF

WHEREFORE, the Defendant requests the following:

- That this Court STRIKE the order (ECF 45) granting the Plaintiff's Motion to Dismiss;
and
- That this Court GRANT a new order without a false statement in it.

DATED at Shirley, Massachusetts this 24th of August, 2015.



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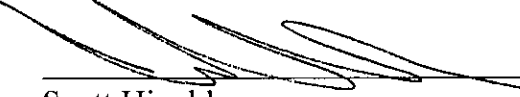
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

WILLIAM M. SCHMALFELDT,)	
)	
Plaintiff,)	
vs.)	
)	Civil Action No. 1:15-cv-01241-RDB
PATRICK G. GRADY, et al,)	
)	
Defendants.)	
)	

CERTIFICATE OF SERVICE

COMES NOW Scott Hinckley, *pro per*, a named defendant in this case, and by my signature affixed to this document below hereby certifies that, on the 24th day of August, 2015, I served a true and correct copy of this Motion to Strike Order and Issue New Order, and this certificate of service filed with the court on Plaintiff to his residence address at 6636 Washington Blvd., Lot 71, Elkridge, MD 21075 by personally placing same in the First Class mail of the United States Postal Service with proper postage affixed.

DATED at Shirley, Massachusetts, this 24th day of August, 2015.



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